

**DISMISS and Opinion Filed April 25, 2018**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-18-00112-CV**

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**DAYSPRING ASSISTED LIVING COMMUNITY, Appellant**

**V.**

**CHRISTINE FABER, INDIVIDUALLY AND AS HEIR AT LAW OF  
CARMELINA "MILLIE" SMITH, DECEASED, Appellees**

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**On Appeal from the 366th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 366-02547-2015**

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**MEMORANDUM OPINION**

Before Chief Justice Wright, Justice Evans, and Justice Brown  
Opinion by Chief Justice Wright

Appellant appeals the trial court's January 19, 2018 order vacating a prior interlocutory order dismissing appellant pursuant to its motion to dismiss for failure to file an expert report. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 74.351(b) (West Supp. 2017). By letter dated March 8, 2018, the Court questioned its jurisdiction over this appeal because there does not appear to be an appealable order. At our request, the parties filed letter briefs addressing our jurisdiction.

Generally, this Court has jurisdiction only over appeals from final judgments and certain interlocutory orders as permitted by statute. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). A party may appeal from an interlocutory order that denies all or part of the relief sought by a motion under section 74.351(b). TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(a)(9) (West Supp. 2017).

In its letter brief, appellant asserts that the trial court’s January 19th order, “operates as a denial of relief sought by [appellant] per TEX. CIV. PRAC. & REM. CODE § 74.351(b), conferring interlocutory jurisdiction as per TEX. CIV. PRAC. & REM. CODE § 51.014(a)(9).” We disagree with appellant’s characterization of the order as a denial of its chapter 74 motion to dismiss. The trial court stated in its order that a question remains as to “whether Plaintiff’s claim was properly categorized as a healthcare liability claim.” Accordingly, we conclude the trial court’s January 19th order is not an appealable interlocutory order denying a chapter 74 motion to dismiss.

We dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Carolyn Wright/  
CAROLYN WRIGHT  
CHIEF JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

DAYSPRING ASSISTED LIVING  
COMMUNITY, Appellant

No. 05-18-00112-CV      V.

CHRISTINE FABER, INDIVIDUALLY  
AND AS HEIR AT LAW OF  
CARMELINA "MILLIE" SMITH,  
DECEASED, Appellees

On Appeal from the 366th Judicial District  
Court, Collin County, Texas  
Trial Court Cause No. 366-02547-2015.  
Opinion delivered by Chief Justice Wright,  
Justices Evans and Brown participating.

In accordance with this Court's opinion of this date, we **DISMISS** this appeal.

It is **ORDERED** that appellees CHRISTINE FABER, INDIVIDUALLY AND AS HEIR AT LAW OF CARMELINA "MILLIE" SMITH, DECEASED recover their costs, if any, of this appeal from appellant DAYSPRING ASSISTED LIVING COMMUNITY.

Judgment entered April 25, 2018.